

**REMARKS**

Claims 1-6, 9-12, 15-18, 28-31 are pending in the application.

Claims 1-6, 9-12, 15-18, 28-31 were rejected.

Claims 1, 9, 15 and 28 are amended herein.

**I. 35 USC §103 Claim Rejections**

In the Office Action, independent claims 1, 9, 15 and 28 were rejected under 35 USC §103(a) as being unpatentable over Hayano *et al.* (U.S. Patent No. 5,132,966) in view of Bruno *et al.* (U.S. Patent No. 5,894,475), and, for claims 15 and 28, further in view of Kawase *et al.* (U.S. Patent No. 5,774,455). Applicants respectfully traverse those rejections and request reconsideration by the Examiner.

The invention here provides a dynamic call admission methodology for voice-band communications channels in an ATM network, and is particularly useful for applications invoking ATM Adaptation Layer Type 2 (AAL2). The dynamic call admission methodology of the invention uniquely makes an admission decision as a function of call type. A key feature of the invention is a recognition that different call types transmitted over a voice circuit have substantially different bandwidth requirements and vary widely in the applicability of statistical multiplexing for a given call type. In the exemplary embodiment described for the invention, call admission is dynamically adapted depending on whether a call using a voice circuit is actually a voice signal, a facsimile signal, or a data signal modulated onto a voice carrier by a modem. A particular feature of the invention is the determination of bandwidth available for admission of voice calls as a function of the number of non-voice calls admitted.

While the primary reference, Hayano, makes note of call admission to its system being carried out according to methods known in the art, the thrust of its teaching is directed to the treatment of calls already admitted – *i.e.*, to the transmission priority to be granted for calls of different categories. Moreover, unlike the call admission methodology disclosed and claimed by the inventors, which is specifically directed to voice-band communications channels, the methodology of Hayano essentially treats voice-channel traffic as a stepchild, receiving no priority and being allocated bandwidth only insofar as total bandwidth is not required for carrying traffic to which Hayano assigns a higher priority. Thus, Applicants submit, Hayano fails both as a teaching of asserted elements of their claimed invention, and additionally as not being analogous art to that of the invention.

Even if Hayano were accepted as teaching all that is asserted by the Office Action, it is clear, as acknowledged by the Office Action, that it does not teach or suggest the limitation of Applicants' claims respecting "updating a count of a number of voice calls currently admitted, when the admitted incoming call is a voice call." To address this deficiency, the Office Action relies on Bruno as teaching this limitation and the assertion that it would have been obvious to one skilled in the art to combine that asserted teaching of Bruno with Hayano to replicate the claimed invention. Applicants submit that such a combinatorial analysis cannot reasonably be supported.

In the first place, it is far from clear that Bruno actually teaches the limitation in question. The portion of the Bruno reference referred to in the Office Action as support for the position refers to a signaling system, and more particularly to the actions taken by the signaling system in respect to the completion of a call which had been set up through the operation of the signaling system. Plainly, that action on the part of the Bruno system has absolutely

nothing to do with call admission. The more critical point, however, is that Bruno is simply not analogous art to the art of the invention. The only point at which there is even remote similarity between the art of Bruno and that of the invention is that both are practiced in the realm of ATM technology. But the thrust of the Bruno teaching is a method for interfacing a billing system established in respect to calls handled via a traditional POTS network with a network in which at least some of the long haul transmission is implemented using ATM technology. In particular, Bruno is concerned with adaptation of the traditional POTS signaling system (*e.g.*, CCS7) for interfacing with ATM switches. As inferentially suggested above, nothing whatsoever in the Bruno teaching is related to call admission. Accordingly, Applicant respectfully submits that Bruno does not teach the limitation in question, and even if it did, the reference is not analogous art to the invention here and therefore cannot stand as an appropriate §103 reference against Applicants' claims.

In the final analysis, Applicants submit that the approach of the Office Action here amounts to a finding a collection of isolated elements in disparate prior art references that collectively comprise all of the elements of the claimed invention. Such an approach clearly constitutes the use of the “hindsight” provided by the Applicant’s disclosure as a basis for interpreting the teaching of the prior art. Such an approach is prohibited in U.S. patent law. See, *e.g.*, *In re Rouffet* (149 F.3d 1350, 1357 (1998): “use [by the Examiner of] the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention ... would be an illogical and inappropriate process by which to determine patentability”.

Moreover, while Applicants believe that the cited references fail even to provide a teaching that could lead one skilled in the art to the invention here, the rejection is also devoid

of another critical factor. It is well established that a §103 obviousness rejection must include a showing of a motivation in the applied references to use the teaching of the cited combination of references in a manner to replicate the claimed invention. The Federal Circuit's discussion of the "obviousness" standard in *In re Rouffet* (*id*), is instructive in this regard.

The court stated:

Virtually all inventions are combinations of old elements [*citations omitted*]. Therefore an examiner may often find every element of a claimed invention in the prior art. If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be an illogical and inappropriate process by which to determine patentability.

To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness. In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed.

Simply put, there is no teaching in either Hayano or Bruno that could be read to suggest a modification of Hayano to provide a dynamic call admission methodology for voice band circuits, where call admission is made as a function of call type and where bandwidth available for voice is determined as a function of the number of non-voice admitted calls, nor the updating of the number a count admitted voice calls with admission of a new voice call.

Accordingly, Applicants respectfully submit one skilled in the art would have found no motivation for combining those references in the manner suggested by the Office Action, and thus that the §103 rejection must fail.

Applicants believe it clear that their invention is patentably distinct from the teaching of Hayano, Bruno and Kawase, or any combination thereof. However, Applicants have concluded that their independent claims may not clearly reflect the distinctions discussed herein, and have accordingly amended each of their independent claims to further characterize the operation of the voice-band call admission methodology of the invention. As so amended, Applicants submit that their independent claims are patentably distinct from the art of record herein. Withdrawal of the §103 rejection of claims 1, 9, 15 and 28 is accordingly respectfully requested.

## **II. 35 U.S.C. §103 Dependent Claim Rejections**

Dependent claims 2-6, 10-12, 16-18 and 29-31 were rejected under 35 U.S.C. §103 as being unpatentable over the combination of Hayano and Bruno applied against independent claims 1, 9, 15 and 28 and at least one of three additional cited secondary references. All of these rejected claims depend, either directly or indirectly, from one of independent claims 1, 9, 15 or 28, which have been shown above to be patentable over the Hayano/Bruno combination. Accordingly, those dependent claims must also be patentable. Withdrawal of the §103 rejection of dependent claims 2-6, 10-12, 16-18 and 29-31 is accordingly respectfully requested.

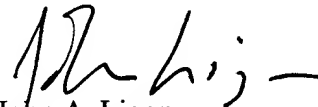
**III. Conclusion**

Having fully addressed the Examiner's rejection bases herein, it is believed that, in view of the preceding amendments and remarks, this application now stands in condition for allowance. Such allowance is respectfully requested.

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Please charge any fees due in respect to this amendment to Deposit Account No. 50-1944.

Respectfully submitted,

  
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Dated: November 14, 2005

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I hereby certify that this Response to Final Office Action is being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313 on November 14, 2005.

By:   
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